IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO. 646 OF 2003

M/s.Aska Sales Pvt. Ltd. Appellants
vs.
1. Income Tax Appellate
Tribunal, Mumbai & ors. Respondents

Mr.M.C.Shah i/b. Mr.Ajay Rao for the appellants.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 29th November 2004

P.C.

Heard Mr.M.C.Shah, the learned counsel for the appellants.

2. The Supreme Court in the case of Commissioner of Income Tax v. Gem India Manufacturing Co., 249 ITR 307 observed thus:

> "Section 80-I gives a deduction in respect of profits and gains from industrial undertakings which, among other conditions, manufacture or produce any article or thing. The question, therefore, is whether the assessee, in cutting and polishing diamonds manufactures or produces any article or thing.
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> The Tribunal took the view that it did because in "common parlance and commercial sense raw diamonds are not the same thing as polished and cut diamonds. The two are different entities in the commercial world. Though the chemical composition remains the same the physical characteristics of shape and class, etc., are substantially different". It would appear that no material had been placed on the

record before the Tribunal upon which it could have reached the conclusions that, either in common or in commercial parlance, raw diamonds were not the same thing as polished and cut diamonds, and that they were different entities in the commercial world. An ipse dixit of the Tribunal is not the best foundation for a decision.

The High Court, as aforestated, concluded that the case was covered by its decision in the case of CIT v. London Star Diamond Co.(I) Ltd. [1995] 213 ITR 517. It was not pointed out to the High Court that the question in that case was whether the assessee was an industrial company within the meaning of section 2(8) of the Finance Act, 1975, and that, in answering that question, the High Court had held that raw diamonds and cut and polished diamonds were different and distinct marketable commodities having different uses; therefore, a company engaged in cutting and polishing raw diamonds for the purpose of export was engaged in the "processing of goods" to convert them into marketable form. The question that the High Court and we are here concerned with is whether, in cutting and polishing diamonds, the assessee manufactures or produces articles or things.

There can be little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production. There is no material on the record upon which such a conclusion can be reached."

3. The Tribunal relied upon the aforesaid judgment of the Supreme Court and held that by process of cutting, kerfing and polishing, no new article or thing is manufactured. The Tribunal thus held that no investment allowance on machinery involving kerfing activity can be allowed because kerfing activity is not manufacturing

activity.

4. We do not find any legal infirmity in the order of the Tribunal.

5. No substantial question of law arises.

6. The appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)